

AFFIDAVIT
of
JOSHUA B. COOPER
SPECIAL AGENT
FEDERAL BUREAU OF INVESTIGATION

I, Joshua B. Cooper, being first duly sworn, do depose and state as follows:

1. I am a Special Agent (SA) with the Federal Bureau of Investigation (FBI), and am assigned to the Jefferson City, Missouri Office. I have been an SA with the FBI for approximately two (2) years. As an SA, I am a law enforcement officer of the United States within the meaning of Title 18, United States Code, Section 2510(7), and am empowered to conduct investigations of, and to make arrests for, certain violations of federal law, including violations of Title 18, United States Code. I have had the opportunity to conduct, coordinate and/or participate in numerous federal investigations relating to the sexual exploitation of children.

2. The statements contained in this affidavit are based on information I learned through my personal knowledge, investigative reports from other investigators familiar with this investigation, and conversations with investigators familiar with this investigation. Since this affidavit is being submitted for the limited purpose of securing a search warrant, I have not included each and every fact known to me concerning this investigation. I have set forth only the facts that I believe are necessary to establish probable cause to believe evidence of violations of Title 18, United States Code, Section 2423(a), specifically, transportation of a minor to engage in criminal sexual activity, is present in the items to be searched.

3. This affidavit is made in support of search warrant applications for three Facebook accounts, as described below, and more fully described in Attachment A (incorporated by reference). This affidavit will describe how the crimes committed by the subject of this

investigation, DANIEL KIRBY, were documented on at least three Facebook accounts from approximately December 1, 2017, through June 26, 2018, as described below:

- a. **18-3104-SW-WJE:** All information associated with Facebook user ID 100012889179668, associated with AUSTIN N KELSEY McCARTHY, that is stored at premises owned, maintained, controlled or operated by Facebook, Inc., a company headquartered in Menlo Park, California;
- b. **18-3105-SW-WJE:** All information associated with Facebook user ID 100011549134778, associated with KELSEY McCARTHY, that is stored at premises owned, maintained, controlled or operated by Facebook, Inc., a company headquartered in Menlo Park, California;
- c. **18-3106-SW-WJE:** All information associated with Facebook user ID 716716712, associated with DANIEL KIRBY, that is stored at premises owned, maintained, controlled or operated by Facebook, Inc., a company headquartered in Menlo Park, California.

Probable Cause

4. On March 4, 2018, the East Ridge, Tennessee Police Department (ERPD) received a report of a 16-year-old female runaway (A.M.) from A.M.'s father. A.M. was discovered missing from her bedroom at approximately 1:20 a.m. A.M.'s father reported that A.M. was upset approximately three weeks before she ran away because he denied her permission to travel to North Carolina to visit Kelsey Kirby-McCarthy, who is the sister of DANIEL LEE KIRBY.

5. A.M.'s boyfriend told ERPD that, on March 2, 2018, he overheard A.M. communicating on her cellular telephone with someone via the Facebook video calling application Facetime. A.M. called the person "baby," but A.M.'s boyfriend observed the contact name "Daniel Kirby" on A.M.'s phone.

6. KIRBY was employed as a truck driver with Celadon Trucking, who reported their GPS tracking of KIRBY's rig showed him at a Dollar General parking lot in East Ridge,

Tennessee, with its motor off approximately at 1:08 a.m. on March 4, 2018. This location is approximately a 300 yard walk from A.M.'s residence.

7. On March 21, 2018, ERPD Detective Robert Wade recorded a telephone call with KIRBY wherein KIRBY acknowledged he knew A.M. was 16 years old and had been missing since March 4, 2018. KIRBY denied any recent contact with A.M. and claimed he last communicated with her in February 2018. Celadon Trucking had searched KIRBY's rig for A.M. on multiple occasions in the last couple of weeks after receiving tips he was harboring her.

8. On March 28, 2018, Detective Wade recorded another telephone call with KIRBY wherein KIRBY claimed he delivered a load in Alcoa, Tennessee, before traveling to Louisiana the night before A.M. ran away. KIRBY initially denied driving through Chattanooga after leaving Alcoa but, after being informed the tracking device on his rig showed otherwise, KIRBY admitted he had travelled through Chattanooga. KIRBY claimed he would not be involved with A.M. because he did not want to be labeled a pedophile. KIRBY claimed he stopped talking to A.M. at least a week before A.M. ran away because he "was just trying to be a friend to this little girl."

9. On June 25, 2018, law enforcement received information that A.M. was living with KIRBY in Slater, Missouri. The Slater Police Department (SPD) subsequently located KIRBY, A.M., Kelsey Kirby-McCarthy and Rocky Banker (Kelsey Kirby-McCarthy's boyfriend) at 427 Carlyle Street, Lot #3 in Slater. A.M. was placed into emergency foster care by the Missouri Department of Social Services Children's Division.

10. After waiving his *Miranda* rights, SPD took a voluntary written statement from KIRBY, in which he admitted to having sexual intercourse with A.M.. KIRBY claimed he knew A.M. as Amberlee Wilson and thought she was over 18. KIRBY wrote that he and A.M. decided

to move in together, and traveled to Missouri when their planned accommodations in Louisiana fell through.

11. In an interview with me on June 26, 2018, KIRBY reported he met A.M., who he again identified as Amberlee Wilson, on Facebook in December 2017 or January 2018. KIRBY considered A.M. his girlfriend approximately three weeks after they began communicating on Facebook. KIRBY solicited A.M. to move in with him. KIRBY picked A.M. up at a Pilot Truck Stop in Tennessee or North Carolina and drove her to Missouri. KIRBY reported that he and A.M. had a sexual relationship that included sexual intercourse on three or four occasions. KIRBY initially claimed he believed A.M. was 18 or 19 years old until law enforcement knocked on his door the previous day, but later in an interview with SA Cooper on July 5, 2018, admitted he knew she was under 18.

12. KIRBY disclosed that he had been communicating with A.M. since December 2017 using Facebook. KIRBY had discussed with A.M. the plan to transport her out of state, and the information to be disclosed by Verizon, particularly the cell-site location information during this time period will corroborate the statements of when and where A.M. was picked up by KIRBY and will therefore provide further evidence of the crimes under investigation.

13. In an interview with a child forensic interviewer on June 26, 2018, A.M. disclosed that a sexual relationship between her and KIRBY began two to three weeks after KIRBY picked her up in Tennessee and drove her to Missouri. Using Facebook and other means, A.M. was introduced to KIRBY through Kelsey Kirby-McCarthy, a lifelong acquaintance, and they developed a long distance relationship. This relationship was facilitated by communicating using Facebook. Kelsey Kirby-McCarthy encouraged A.M. to run away to escape an abusive boyfriend.

KIRBY agreed with A.M.'s plan to run away and assisted with its execution. A.M. communicated with both KIRBY and Kelsey Kirby-McCarthy via Facebook.

14. A.M. reported that she and KIRBY stayed with a couple named Angel and Steve upon arriving in Marshall, Missouri. Angel was sympathetic to A.M.'s situation because she ran away when she was A.M.'s age.

15. A.M. and Kirby moved in with a couple named Ron and Cassandra when Angel left Marshall. A.M. and KIRBY conspired to create the alias Amberlee Wilson to hide her true identity from Ron and Cassandra. A.M. and KIRBY subsequently relocated to the trailer in Slater, Missouri, where she was located by law enforcement.

16. A.M. reported she accompanied KIRBY to North Carolina to pick up Kelsey Kirby-McCarthy and Rocky Banker and bring them to Missouri. A.M. reported both KIRBY and Kelsey Kirby-McCarthy knew she was 16 years old.

17. On June 26, 2018, KIRBY, Kelsey Kirby-McCarthy and Rocky Banker voluntarily gave the FBI consent to search five cellular telephones and two laptop computers seized from 427 Carlyle Street, Lot #3, Slater, Missouri. Law enforcement did not search the trailer for other electronic devices or evidence. KIRBY, Kelsey Kirby-McCarthy and Rocky Banker stated that all of them shared the cellular telephones and computers, had open access to them, and each used them as communal devices.

18. The volunteered items were collected as evidence and submitted to the Missouri State Technical Assistance Team for forensic examination. After being granted permission by KIRBY, examination of a laptop computer KIRBY had identified belonged to him by a STAT examiner yielded a photograph of an apparent journal entry by A.M., in which A.M. wrote that

she had run away from her home in Tennessee five weeks earlier and was living in Missouri with her boyfriend, DANIEL LEE KIRBY.

19. Preservation letters for McCARTHY's Facebook accounts, Facebook user IDs 100012889179668 and 100011549134778, and for KIRBY's Facebook account, Facebook user ID 716716712, were sent to Facebook on October 22, 2018.

INFORMATION AVAILABLE FROM FACEBOOK

20. Facebook owns and operates a free-access social networking website of the same name that can be accessed at <http://www.facebook.com>. Facebook allows its users to establish accounts with Facebook, and users can then use their accounts to share written news, photographs, videos, and other information with other Facebook users, and sometimes with the general public.

21. Facebook asks users to provide basic contact and personal identifying information to Facebook, either during the registration process or thereafter. This information may include the user's full name, birth date, gender, contact e-mail addresses, Facebook passwords, Facebook security questions and answers (for password retrieval), physical address (including city, state, and zip code), telephone numbers, screen names, websites, and other personal identifiers. Facebook also assigns a user identification number to each account.

22. Facebook users may join one or more groups or networks to connect and interact with other users who are members of the same group or network. Facebook assigns a group identification number to each group. A Facebook user can also connect directly with individual Facebook users by sending each user a "Friend Request." If the recipient of a "Friend Request" accepts the request, then the two users will become "friends" for purposes of Facebook, and can exchange communications or view information about each other. Each Facebook user's account

includes a list of that user’s “friends” and a “News Feed,” which highlights information about the user’s “friends,” such as profile changes, upcoming events and birthdays.

23. Facebook users can select different levels of privacy for the communications and information associated with their Facebook accounts. By adjusting these privacy settings, a Facebook user can make information available only to himself or herself, to particular Facebook users, or to anyone with access to the Internet, including people who are not Facebook users. A Facebook user can also create “lists” of Facebook friends to facilitate the application of these privacy settings. Facebook accounts also include other account settings that users can adjust to control, for example, the types of notifications they receive from Facebook.

24. Facebook users can create profiles that include photographs, lists of personal interests, and other information. Facebook users can also post “status” updates about their whereabouts and actions, as well as links to videos, photographs, articles, and other items available elsewhere on the Internet. Facebook users can also post information about upcoming “events,” such as social occasions, by listing the event’s time, location, host, and guest list. In addition, Facebook users can “check in” to particular locations or add their geographic locations to their Facebook posts, thereby revealing their geographic locations at particular dates and times. A particular user’s profile page also includes a “Wall,” which is a space where the user and his or her “Friends” can post messages, attachments, and links that will typically be visible to anyone who can view the user’s profile.

25. Facebook allows users to upload photos and videos, which may include any metadata such as location that the user transmitted when s/he uploaded the photo or video. It also provides users the ability to “tag” (i.e., label) other Facebook users in a photo or video. When a user is tagged in a photo or video, he or she receives a notification of the tag and a link to see the

photo or video. For Facebook's purposes, the photos and videos associated with a user's account will include all photos and videos uploaded by that user that have not been deleted, as well as all photos and videos uploaded by any user that have that user tagged in them.

26. Facebook users can exchange private messages on Facebook with other users. These messages, which are similar to e-mail messages, are sent to the recipient's "Inbox" on Facebook, which also stores copies of messages sent by the recipient, as well as other information. Facebook users can also post comments on the Facebook profiles of other users or on their own profiles: such comments are typically associated with a specific posting or item on the profile. In addition, Facebook has a Chat feature that allows users to send and receive instant messages through Facebook. These chat communications are stored in the chat history for the account. Facebook also has a Video Calling feature, and although Facebook does not record the calls themselves, it does keep records of the date of each call.

27. If a Facebook user does not want to interact with another user on Facebook, the first user can "block" the second user from seeing his or her account.

28. Facebook has a "like" feature that allows users to give positive feedback or connect to particular pages. Facebook users can "like" Facebook posts or updates, as well as webpages or content on third-party (i.e., non-Facebook) websites. Facebook users can also become "fans" of particular Facebook pages.

29. Facebook has a search function that enables its users to search Facebook for keywords, usernames, or pages, among other things.

30. Each Facebook account has an activity log, which is a list of the user's posts and other Facebook activities from the inception of the account to the present. The activity log includes stories and photos that the user has been tagged in, as well as connections made through the

account, such as “liking” a Facebook page or adding someone as a friend. The activity log is visible to the user but cannot be viewed by people who visit the user’s Facebook page.

31. Facebook Notes is a blogging feature available to Facebook users, and it enables users to write and post notes or personal web logs (“blogs”), or to import their blogs from other services, such as Xanga, LiveJournal and Blogger.

32. The Facebook Gifts feature allows users to send virtual “gifts” to their friends that appear as icons on the recipient’s profile page. Gifts cost money to purchase, and a personalized message can be attached to each gift. Facebook users can also send each other “pokes,” which are free and simply result in a notification to the recipient that he or she has been “poked” by the sender.

33. Facebook also has a Marketplace feature, which allows users to post free classified ads. Users can post items for sale, housing, jobs, and other items on the Marketplace.

34. In addition to the applications described above, Facebook also provides its users with access to thousands of other applications (“apps”) on the Facebook platform. When a Facebook user accesses or uses one of these applications, an update about that the user’s access or use of that application may appear on the user’s profile page.

35. Facebook uses the term “Neoprint” to describe an expanded view of a given user profile. The “Neoprint” for a given user can include the following information from the user’s profile: profile contact information; News Feed information; status updates; links to videos, photographs, articles, and other items; Notes; Wall postings; friend lists, including the friends’ Facebook user identification numbers; groups and networks of which the user is a member, including the groups’ Facebook group identification numbers; future and past event postings;

rejected “friend” requests; comments; gifts; pokes; tags; and information about the user’s access and use of Facebook applications.

36. Facebook also retains Internet Protocol (“IP”) logs for a given user ID or IP address. These logs may contain information about the actions taken by the user ID or IP address on Facebook, including information about the type of action, the date and time of the action, and the user ID and IP address associated with the action. For example, if a user views a Facebook profile, that user’s IP log would reflect the fact that the user viewed the profile, and would show when and from what IP address the user did so.

37. Social networking providers like Facebook typically retain additional information about their users’ accounts, such as information about the length of service (including start date), the types of service utilized, and the means and source of any payments associated with the service (including any credit card or bank account number). In some cases, Facebook users may communicate directly with Facebook about issues relating to their accounts, such as technical problems, billing inquiries, or complaints from other users. Social networking providers like Facebook typically retain records about such communications, including records of contacts between the user and the provider’s support services, as well as records of any actions taken by the provider or user as a result of the communications.

38. As explained herein, information stored in connection with a Facebook account may provide crucial evidence of the “who, what, why, when, where and how” of the criminal conduct under investigation, thus enabling the United States to establish and prove each element or alternatively, to exclude the innocent from further suspicion. In my training and experience, a Facebook user’s “Neoprint,” IP log, stored electronic communications, and other data retained by Facebook, can indicate who has used or controlled the Facebook account. This “user attribution”

evidence is analogous to the search for “indicia of occupancy” while executing a search warrant at a residence. For example, profile contact information, private messaging logs, status updates, and tagged photos (and the data associated with the foregoing, such as date and time) may be evidence of who used or controlled the Facebook account at a relevant time. Further, Facebook account activity can show how and when the account was accessed or used. For example, as described herein, Facebook logs the Internet Protocol (IP) addresses from which users access their accounts along with the time and date. By determining the physical location associated with the logged IP addresses, investigators can understand the chronological and geographic context of the account access and use relating to the crime under investigation. Such information allows investigators to understand the geographic and chronological context of Facebook access, use, and events relating to the crime under investigation. Additionally, Facebook builds geo-location into some of its services. Geo-location allows, for example, users to “tag” their location in posts and Facebook “friends” to locate each other. This geographic and timeline information may tend to either inculpate or exculpate the Facebook account owner. Last, Facebook account activity may provide relevant insight into the Facebook account owner’s state of mind as it relates to the offense under investigation. For example, information on the Facebook account may indicate the owner’s motive and intent to commit a crime (e.g., information indicating a plan to commit a crime) or consciousness of guilt (e.g., deleting account information in an effort to conceal evidence from law enforcement).

39. Therefore, the computers of Facebook are likely to contain all the material described above, including stored electronic communications and information concerning subscribers and their use of Facebook, such as account access information, transaction information, and other account information.

INFORMATION TO BE SEARCHED AND THINGS TO BE SEIZED

40. I anticipate executing this warrant under the Electronic Communications Privacy Act, in particular 18 U.S.C. §§ 2703(a), 2703(b)(1)(A) and 2703(c)(1)(A), by using the warrant to require Facebook to disclose to the Government copies of the records and other information (including the content of communications) particularly described in Section I of Attachment A. Upon receipt of the information described in Section I of Attachment A, Government authorized persons will review that information to locate the items described in Section II of Attachment A.

CONCLUSION

41. For the reasons set forth above, I submit that this affidavit supports probable cause for a warrant to search the accounts fully described in paragraph 3 above, and seize the items described in Attachment A.

42. This Court has jurisdiction to issue the requested warrant because it is “a court of competent jurisdiction” as defined by 18 U.S.C. § 2711, 18 U.S.C. §§ 2703(a), (b)(1)(A) & (c)(1)(A). Specifically, the Court is “a district court of the United States . . . that – has jurisdiction over the offense being investigated.” 18 U.S.C. § 2711(3)(A)(i).

43. Pursuant to 18 U.S.C. § 2703(g), the presence of a law enforcement officer is not required for the service or execution of this warrant.

44. The facts set forth in this affidavit are true and correct to the best of my knowledge and belief.

Further, Affiant sayeth not.


Joshua B. Cooper
Special Agent
Federal Bureau of Investigation

Sworn to and subscribed before me this, the 1st day of November, 2018.


Willie J. Epps, Jr.
United States Magistrate Judge